IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 683 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BIPINKUMAR VADILAL SHAH AND ONE ANOTHER

Appearance:
MS KATHABEN GAJJAR ASST. PUBLIC PROSECUTOR for APPELLANT
MR JB PARDIWALA for Respondent No. 1
MR DK MODI for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA
Date of decision: /02/2000

C.A.V. JUDGEMENT

#. This is an appeal under Section 378(1) of Criminal Procedure Code, 1973 filed by the State Government challenging the order of acquittal passed by the Additional Chief Judicial Magistrate, Valsad at Navsari by rendering his judgment, Exh. 81 dated 31-5-1991 in

Criminal Case No. 1 of 1990 which was pending on his file.

#. The respondents in this appeal were accused before the trial Court in Criminal Case No. 1 of 1990. For the sake of convenience, the parties will be referred to hereinafter as the parties before the lower court.

#. The facts leading to this present appeal can be summarised as follows:-

On or about 3-1-1990 at about 10.30 A.M., the original complainant Shri J.G. Mithavala who was a Food Inspector appointed for Valsad District visited the shop of Bipinkumar Vadilal Shah who was running a business of grocery on Bazar Road at Vapi, Taluka Killapardi, in company of one Jagdishkumar Karsandas who acted as Panch and one Shri K.B.Patel. At the time of visit of said shop of accused No.1, owner of that shop, Shri Bipinkumar Vadilal Shah was present in the shop. Thereafter the original complainant Shri J.G. Mithavala, who was Food Inspector, took a sample of Chillies Powder weighing 600 gms. from Shri Bipinkumar Vadilal Shah for the purpose of analysis, and 3 samples were prepared as per the procedure laid down in the Prevention of Food Adulteration Act, 1954 (Same will be referred to as the Act hereinafter) and the Prevention of Food Adulteration Rules, 1955 (in short, `the Rules'). Thereafter that sample was sent to the Public Analyst of Food and Drugs Laboratory at Baroda. Thereafter the Public Analyst analysed the said sample of Chillies Powder and he made a report stating inter alia that said article of Chillies Powder was adulterated as per definition of `adulterated' as defined under Section 2(i-a) of the Act. It was reported that there was a pink oil soluble non-permitted colour in said article of Chillies Powder. Thereafter the complainant sought a written consent as per Section 20 of the Act to prosecute the accused and on obtaining that written consent he lodged the complaint in the Court of Additional Chief Judicial Magistrate at Valsad.

As per the evidence of Food Inspector Shri J.G.Mithavala, which is recorded at Exh. 12, there were 14 sealed and packed bags of Chillies Powder which were placed in the shop for sale purpose. As per his evidence, the Chillies Powder was there in one plastic bag which was in sealed condition and that plastic bag was placed in one cotton bag which was stitched by sewing and such each bag was containing 10 kgs. of Chilli Powder. The Food Inspector has specifically deposed in his evidence that there was one label on each bag

containing write-up of following text both in Gujarati and English versions.

"Standard Grade Agmark (Top Brand) Chillies Powder - The Manufacturer Jai Khodiyar Industries, Paliad Road, Botad"

It is also deposed by him that there was also a label of "Agmark No. 068694, Lot No. 44 Standard Grade, Packing Station, Botad" stitched with each bag. As per the evidence of Food Inspector, Shri Bipinkumar V. Shah, who was the owner of shop named Vadilal Hathichand had purchased total weighing 600 kgs. of Chillies Powder from the said manufacturer Jai Khodiyar Industries and out of that purchased 600 kgs. chilli Powder, 14 sealed and packed bags of Chillies Powder were placed in the shop for sale purpose. In short, it is the case of the complainant that accused No.1 was a vendor of food article of which sample was taken by the Food Inspector whereas accused No.2 being manufacturer of the said food article had sold that chillies powder to accused No.1, and therefore after taking sample of chillies powder from accused No.1, the Food Inspector had sent a written notice Form No. 6 by Regd. Post A.D. to accused No.2 on 4-1-1989. It is also the case of the Food Inspector that after receiving the report of chillies powder from Public Analyst, he sent that report of Public Analyst to accused No.2 by Regd. Post A.D. It is the case of the prosecution that said report of Public Analyst has already been received by accused No.2.

The learned Magistrate recorded evidence of complainant before framing of charge and on the basis of that pre-charge evidence, he framed a charge, Exh. 50 against both the accused. A specific case has been put to both the accused in charge Exh. 50 that Food Inspector purchased chillies powder weighing 600 gms. for the purpose of analysis from accused No.1 by paying an amount of Rs.19-20ps as price for that article. As per charge Exh. 50 specific case has been put to accused No.2 that bags of chillies powder from which sample was taken was manufactured by accused No.2 and it was sold to accused No.1, and therefore as per charge Exh. 50 specific case has been put to both the accused that accused No.1 was vendor of the said food article while accused No.2 was the manufacturer of the said chillies powder and both have committed an offence punishable under Section 16(1)(1-A)(ii) for contravention of Section 7(i) read with Section 2(1-a)(j) of the Act.

#. Thus it appears from charge Exh. 50 that Food Inspector led such an evidence that accused No.1 has made

out a case that he is entitled to defence under Section 19(2) of the Act.

On the basis of said charge, Exh. 50, the prosecution as well as accused No.1 led an oral evidence as well as documentary evidence in support of the respective cases and after hearing both the parties and after appreciating the evidence led by both the parties, the learned Additional Chief Judicial Magistrate acquitted both the accused by rendering his judgment Exh. 81 on 31-5-1991.

#. Being dissatisfied with and aggrieved against the said judgement, State Government has preferred this present appeal.

#. This Court has perused the entire original record of Criminal Case No. 1 of 1990 from which this appeal has arisen. I have heard Ms. Kathaben Gajjar, learned Asst. P.P. for the appellant, Shri J.B. Pardiwala, the learned advocate for respondent No.1 and Shri D.K. Modi, learned advocate for respondent No.2 in detail at length.

#. The appellant has assailed the judgment of the trial court mainly on following three counts:-

(1) That the learned Addl. Chief Judicial Magistrate has erred in accepting the evidence of accused No.1 which he advanced under Section 19(2) of the Act,
(2) The learned Additional Chief Judicial Magistrate has erred in accepting the defence of accused No.2 to the effect that his defence has been prejudiced because he did not receive a copy of report of Public Analyst which ought to have been sent to him under Section 13(2) of the Act,
(3) That the learned Addl. Chief Judicial Magistrate has erred in arriving at a decision that a written consent, Exh. 35 is not legal and valid as the same was granted by concerned authority without applying his mind.

#. The first ground for attacking the judgment of the lower court is to the effect that the learned Additional Chief Judicial Magistrate has erred in accepting the defence of accused No.1 to the effect that he had given a sample of chillies powder from that very stock which was sold by accused No.2 to accused No.1 under bill Exh. 63 and that stock of chillies powder was properly stored and that he sold it in the same state as he purchased it, and further that accused No.2 being manufacturer had sold

that chillies powder with written warranty in the prescribed form.

It is known that accused has to prove his case on the principle of preponderance of probability as is required in civil cases. He is not required to give a strict proof of his case advanced in his defence as is given by the prosecution in criminal cases beyond reasonable doubt. Here in this case when the Food Inspector visited the shop, it is an admitted fact that there were 14 packed and sealed bags of chillies powder in the stock of accused No.1, which were placed for sale to customers. It is an admitted fact that one packed plastic bag was containing chillies powder weighing about 10 kgs. and that bag of chillies powder was placed inside one cotton bag which was stitched by sewing and there was a label of accused No.1 in which it was certified that said chillies powder was a Top brand Agmark Standard Grade Chillies Powder and its manufacturer was Jai Khodiyar Industries, Paliad Road, Botad. It is an admitted fact that sample of chillies powder was taken from one of such sealed and packed 14 bags of chillies powder by the Food Inspector and at that very time accused No.1 had stated to complainant, i.e., Food Inspector that he had purchased that 14 bags of chillies powder from accused No. 2 and for that he had shown bill Exh. 63 which is, as stated by accused No.1, was of accused No.2 and thus accused No.1 has advanced his defence under Section 19(2) of the Act.

#. The learned A.P.P. for the appellant and Shri D.K. Modi, learned advocate for respondent No.2 have argued that for a moment if it is believed that goods of chillies powder were sold by accused No.2 to accused No.1 under bill Exh.63, then that bill Exb. 63 cannot be accepted as a warranty as required to be issued under Section 14 of the Act read with Rule 12-A of the Rules. They have further argued that it is stated in Rule 12-A of the Rules that manufacturer is supposed to give a warranty in prescribed Form VI-A either separately or in the bill, or cash memo or label, and as per that prescribed Form VI-A, below Appendix A of the Rules, the manufacturer has to give a certificate in the warranty that food/foods mentioned in the invoice is/are warranted to be of the nature and quality which it/these purports/purport to be. They have also argued that there is no such type of certificate below Exh.63 and therefore it cannot be said that accused No.2 had given a written warranty in the bill Exh. 63. They have cited one authority of Rajaldas Gurunamal Pamanani v. The State of

Maharashtra reported in (1948-1997) Supreme Court on Food Adulteration Cases pg. 299. It may be noted that the cited case was decided on 03-12-1974. As per the facts of that case, the sample was taken in August 1967.

In this authority it has been held by the Apex Court that vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article from any manufacturer, distributor or dealer with a written warranty in the prescribed form and these salutary provisions are designed for the health of the nation and therefore a warranty is enjoined and no laxity should be permitted. The learned A.P.P. as well as Shri D.K. Modi both have argued that in this case accused No.1 has not produced any written warranty as prescribed Form VI-A.

##. As per Section 14 of the Act, no manufacturer or distributor of or dealer in any article of food shall sell such article to any vendor unless he also gives warranty in writing in the prescribed form about the nature and quality of such article to the vendor. There is a provision of Rule 12-A in the Rules as to what type of warranty should be given by such manufacturers, distributors and dealers. As per Rule 12-A of the Rules every manufacturer, distributor or dealer selling article of food to vendor shall give either separately or in the bill, cash memo, or label, a warranty in Form VI-A. There is a prescribed Form VI-A in Appendix A below the Rules and that prescribed Form requires that manufacturer, distributor or dealer to mention in written warranty the details with regard to following points:

Invoice No., Place, Date, Date of sale, Nature and quality of article/brand name, if any, Batch No. or Code No., quantity and price.

Over and above the person who issues such type of warranty is required to give a certificate that food/foods mentioned in said invoice is/are warranted to be of the nature and quality which it/these purports/purport to be. Thus the Legislature has cast a duty on manufacturer, distributor or dealer to give a prescribed warranty as stated in Form VI-A of the Appendix A below the Rules. It is admitted fact that accused No.1 relied on bill Exh.63 for his case to be covered under Section 19(2) of the Act. That bill Exh. 63 was tendered in cross-examination of complainant by accused No.1. After framing of the charge, accused No.1 further cross-examined the complainant on 26-10-1990.

When that bill was tendered in evidence and when it was exhibited there was no objection whatsoever from side of accused No.2. If we read cross-examination of the complainant by accused No.2 we find that there is no cross-examination on said bill exh. 63. Even in the arguments before the trial court, there is no dispute taken by accused No.2 for said bill Exh. 63.

##. During the course of arguments before this Court, the learned advocate Shri D.K. Modi contended that this bill Exh. 63 is not duly proved in accordance with law. This type of dispute with regard to proof of the document is taken for the first time before this Court. He ought to have taken this type of dispute at the earliest before the lower court. This Court is of the view that such type of dispute cannot be taken for the first-time before the Appellate Court when accused No.2 did not take any objection with regard to Exh. 63, when it was tendered and exhibited in the evidence. In this present case the accused No.1 entered into defence and Bipinkumar V. Shah from whom the sample was taken has given his evidence at Exh. 73. He has deposed in his evidence at paragraph 2 that on 3-1-1989 Food Inspector had visited his shop and that Food Inspector took a sample of chillies powder from sealed and packed bag of the chillies powder and that chillies powder was purchased by them from Jai Khodiyar Industries, i.e. accused No.2 and that goods were purchased under bill Exh. 63. He has also deposed that that goods were worth Rs.26,800/- and they received 90 bags of chillies powder each containing 10 kgs.

If we read the cross-examination of accused No.1 (Exh. 73) by accused No.2, we find that it is not the case of the accused No.2 that said bill Exh. 63 is bogus, forged, got up and prepared with a view to take a false defence under Section 19(2) of the Act. Looking to the cross-examination of accused No. 1 by accused No.2 and the bill Exh. 63, it is crystal clear that goods were sold by accused No.2 to accused No.1 under bill Exh. 63 dated 10-11-1988.

Accused No.1 has put reliance on this bill Exh. 63 for his defence under Section 19(2) of the Act. Shri D.K. Modi, learned advocate for the accused No.2 has argued that there is no written warranty in this bill Exh. 63 as required by Rule 12-A of the Rules, and therefore as per his arguments defence of accused No.2 should not be accepted to have been proved. For this he has cited case of Rajaldas Gurnamal Pamnani (supra).

##. It may be noted that the authority of Rajaldas

Gurnamal Pamnani (supra) is relating to Criminal Appeal Nos. 6 and 9 both of 1971 decided by the Apex Court on 3-12-1974 and looking to the facts of the case before the Apex Court a sample of compounded asafoetida was taken in August 1967. Shri Pardiwala has drawn an attention of this Court to proviso to Section 14 of the Act. This proviso was inserted in Section 14 of the Act by Act No. 34 of 1976 with effect from 1-4-1976 and therefore the authority cited by Shri D.K. Modi was for the period prior to proviso to Section 14 was inserted with effect from 1-4-1976 and therefore aforesaid authority cited by Shri D.K. Modi will not be applicable to this case.

##. Section 14 with its proviso reads as follows:

"14. Manufacturers, distributors and dealers to give warranty. - No manufacturer or distributor of, or dealer in, any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor:

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.

Explanation.-In this section, in sub-section (2) of Section 19 and in Section 20-A, the expression "distributor" shall include a commission agent."

##. Shri Pardiwala has argued that looking to the text of this proviso to Section 14 , a bill, cash memo or invoice in respect of the sale of any article of food given by manufacturer or distributor of or dealer in such article to the vendor thereof shall be deemed to be a warranty given by said manufacturer, distributor or dealer under this Section and therefore a deeming effect has been given by this proviso and each and every bill or cash memo or invoice should be accepted as a warranty given by manufacturer, distributor or dealer. Shri Pardiwala has argued that when accused No.1 has specifically deposed in his evidence that they purchased goods from accused No.2 under bill Exh. 63 that bill Exh. 63 should be accepted to be a warranty as required to be given under Rule 12-A of the Rules. In support of his arguments, he has cited the following authorities:-

(1) Vishnu Avatar vs. State (Allahabad High Court)

reported in 1978(II) PFA Cases 162

In this cited case Food Inspector had taken a sample of Haldi on 22-12-1972. At that time proviso to Section 14 of the Act was not there on statute book. Still however the Allahabad High Court held that proviso to Section 14 which has been inserted by Act No. 34 of 1976 would certainly be available to the applicant. In that case, bill was duly proved. The Allahabad High Court held that in this view of the matter in spite of the absence of written warranty in the prescribed form, production of a duly proved bill is sufficient compliance of the law which grants protection to the applicant under Section 19(2) of the Prevention of Food Adulteration Act, and in that case the appellant was found not guilty of the commission of any offence and the conviction and sentence of the accused for the offence under Section 7 and 16 of the Act were set aside.

(2) Niranjan Behera v. Satyanarayan Maheshwari reported in 1981 Cri. Law Journal 1790. (Orissa)

In that case it has been held that though credit bill by shop owner was submitted to the Food Inspector later on, it was sufficient to protect him from prosecution under Section 19(2), even if no separate warranty was given in bill. It has been observed in paragraph 8 of that authority that according to proviso a bill or a cash memo or invoice in respect of the sale of any article of food given by manufacturer, distributor or dealer in such article to a vendor shall be deemed to be warranty given by such manufacturer, distributor or dealer. The proviso does not contemplate that the bill or memo or invoice should contain the warranty in Form VI-A. Thus, where a bill, cash memo or invoice is given at the time of sale a separate warranty in Form VI-A is unnecessary. The bill cash memo or invoice will be deemed to be a warranty even though it does not contain the details as to the nature or quality of the article sold. If the Legislature intended that a bill, cash memo or invoice should be given in terms of Rule 12-A then there was no question of deeming it to be a warranty under the proviso to Section 14.

It has further been observed in paragraph 10 of aforesaid authority that a statutory fiction was created for the benefit of the vendors by providing that a bill, a cash memorandum or an invoice will be deemed to be a warranty given by manufacturer, distributor or dealer under Section 14 of the Act.

(3) The Food Inspector, M.C.H. Hyderabad represented by the Public Prosecutor, Andhra Pradesh High Court vs. Ashok Patel reported in 1997(1) PFA Cases 223.

In the cited case, respondent No.1 had purchased 50 bags of Banjara Mirch powder from respondent No.2 under a cash bill Exh. P-17. The Andhra Pradesh High Court has held that it is deemed that there is warranty in favour of respondent No.1 regarding the quality of the food article and in those circumstances, the defence put forth by the respondent No.1 under Section 19(2) of the Act was accepted. In that cited case one case of C. Gopalakrishna v. State ((1978)(2) FAC 134) has been referred to.

(4) State of Gujarat vs. Hanifbhai V. Nedariya and another reported in 1997(2) PFA cases 33.

In the cited case conditions which are required to be fulfilled by the person who claims benefit of defence under Section 19(2) are stated. As per said conditions it is required to be proved by accused claiming benefit of defence under Section 19(2) of the Act that the article of food while in his possession was properly stored and that he sold in the same State as he purchased it.

##. In this present case on hand looking to the evidence of Food Inspector and Panchnama, it is crystal clear that the sample was taken from a bag of chillies powder which was there in shop of Accused No. 1 and it was in sealed and packed condition and that is why a charge has been framed against accused No.2 that accused No.2 sold chillies powder to accused No.1 and from that stock of Chillies Powder, Food Inspector took a sample of chillies powder from accused No.1.

(5) Ibrahim v. Food Inspector reported in 1997(2) PFA Cases 62.

In that case the accused who had claimed the benefit of defence under Section 19(2) of the Act had advanced his case that there was a label of manufacturer on bags of chilies powder.

Shri Pardiwala has argued that as per Rule 12-A of the Rules, a warranty can be given in label also. Label is required to be attached with packed goods as per Rule 32 of the Rules. Shri Pardiwala has the argued that

in this case as per panchnama, Exh. 20, there was a label containing the following writing, written both in English and Gujarati languages.

"Top Brand Chillies Powder - Agmark Standard Grade - Manufacturer: Jai Khodiyar Industries, Paliad Road, Botad (Gujarat)."

It is also stated in the panchnama Exh. 20 that there was a label of "Agmark label No. 068694, Grade : Standard, Lot No. 44, Packing Station : Botad"; on bag of Chillies Powder and thus such type of label can be treated as a warranty and as per the cited case of Ibrahim vs. State, the Kerala High Court has held that on reading Section 19(2) of the Act read with Rule 12-A and Rule 32 read with Form VI-A, though warranty under Rule 12-A should be in Form VI-A and though label was not in that Form, it is not necessary that a label should be in that Form, and label could not be in Form VI-A in all respects and if it is a label given under Rule 32 and contains a certificate as in Form VI-A it would operate as warranty under Rule 12-A. In this present case on hand as per Panchnama Exh. 20, label was containing a writing that in that packing there was Top brand chillies powder Agmark standard. The Agmark label on the seal by the seller of Food article is an assurance to the purchaser of the quality of the article that the article is as required by the Act and the Rules. From the instructions for the Grading of Agmark, quality of food article is guaranteed, vide 1969 Kerala Law Journal 829.

(5) State of Gujarat v. Kantilal Chimanlal, reported in 1980 (21) GLR 563. Relevant paragraph 11 reads as follows:-

"In my view, the above quoted observations of the Supreme Court squarely apply to the facts of the present case. Before the Supreme Court the proviso to Rule 12A was under investigation. In the case on hand, the proviso to Section 14 is required to be employed for the purpose of examining the pith and substance of Section 19(2) of the Act. In that case, the rigorous operation of the defence under Sec. 19(2) of the Act was diluted with reference to the proviso appended to rule 12A, I see no reason why the proviso to Sec. 14 enjoins upon the manufacturer to give to the vendor a warranty in the prescribed form. But the proviso dilutes it and it lays down that if the substance of the warranty could be had in the bill etc. it shall be deemed that the warranty

in the prescribed form is given. In the case on hand in the light of all attendant circumstances which I have enumerated above, it is crystal clear that the bill in question and the label and the seals on tins all together show that the accused relied upon the implied warranty that what was sold to him by the manufacturer was ground nut oil pure and simple unadulterated with castor oil which in the case on hand is as much as 8%. Therefore, reading the proviso appended to Sec. 14 conjointly with Sec. 19(2) of the Act, I hold that in the facts and circumstances of this particular case, the defence under sec. 19(2) is well laid."

(6) Ramanbhai Shivabhai Prajapati v. State of Gujarat reported in 1991(1), 22(1) GLR 82.

In that case it has been held that where an accused produces a bill and facts disclosed that what he sold was an article in the form which he received, the conviction of the accused is bad. In that cited case, it has been observed in para 11 that the petitioner-accused had produced bill No. 17308 (Exh.50) wherein it was clearly mentioned as Anand Amul pasteurized standard milk. This court has held that as per proviso to Section 14 of the Act even bill, cash memo or invoice would be deemed to be a warranty, and separate warranty is unnecessary. This Court has also held that the bill, cash memo or invoice would be deemed to be a warranty even though it does not contain the details as to the nature or quality of the article shown. In this case, one case of Amarchand v. State of Punjab 1984(1) FAC 967 has been referred to and in that case it has been held that when there was no written warranty in the prescribed form, the cash memo issued by the manufacturer or dealer to the vendor was held to be legal and valid warranty.

##. In view of the above legal position when accused No.1 in this present case has proved to the satisfaction of the trial court on principle of preponderance of probability that he purchased the goods from accused No.2 under bill Exh. 63 and he gave a sample of chillies powder from that very sold packet of chillies powder which he had received from accused No.2, then accused No.1 has satisfied all the conditions to get the benefit of defence under Section 19(2) of the Act.

##. The second contention of the learned A.P.P. is to the effect that the learned Magistrate has erred in accepting the contention of accused No.2 that his defence

has been prejudiced because he has not received a report of Public Analyst as per Section 13(2) of the Act. As per the facts of the case and evidence led in this case the Food Inspector has deposed in his evidence that Local Health Authority had sent a copy of report of Public Analyst under his letter Exh. 39 dated 25-4-1989 by Regd. Post A.D.. Food Inspector has produced a copy of the letter of Local Health Authority and as per this letter, copies of report of Public Analyst were sent to accused No.1 and 2. There is no dispute from the side of accused No.1 that he has not received a copy of the report of Public Analyst. From the very beginning it is the contention of the accused No.2 that he has not received a copy of the report of Public Analyst. The prosecution has produced a postal A.D. receipt, Exh. 42 to show that accused No.2 has received a copy of report of Public Analyst sent with letter Exh. 39. The postal A.D. receipt Exh. 42 bears signature purported to have been signed by Shah Dipak T. The prosecution has not led any evidence to prove that person named Shah Dipak T. is a nominee or a responsible person of accused No.2. The prosecution has not led any evidence to prove the nexus in between Shah Dipak T and accused No.2.

##. With regard to letter Exh. 39 of the Local Health Authority addressed to accused No.2 with which a report of Public Analyst alleged to have been sent, a question was asked to accused No.2. It may be noted that accused No.2 was represented by its nominee, one Shri Rajendrakumar Chandulal Shah. He was asked as to what he had to say for Exh. 39 and he has specifically replied that he has not received it. With regard to Exh. 42 being a postal A.D. receipt, a question was asked to him as to what he had to say for Exh. 42. He has replied that Exh. 42 has not been received by him and it does not bear his signature and therefore looking to further statement accused No.2 has specifically denied for having received Exh. 39 together with a copy of report of Public Analyst. Under these circumstances, it was the duty of the prosecution to prove beyond reasonable doubt that Exh. 39 has been received by accused No.2. When postal acknowledgment receipt Exh. 42 is found to have been received by one Shah Dipak T., it was the duty of the prosecution to further prove that this Shah Dipak T. was responsible person present in the office of accused No.2, when he signed Exh.. 42. Learned A.P.P. has argued that the lower court ought to have come to the conclusion that a letter Exh. 39 which was addressed to accused No. 2 at its address as shown in bill, Exh. 63, was received by accused No.2. This type of presumption cannot be made by the lower court.

##. To assist the court, Shri D.K. Modi, learned advocate for accused No.1 has cited one unreported judgment dated 8-12-1980 of this Court (Coram : D.C. Gheewala, J) rendered in Criminal Appeal No. 204 of 1979. In the cited case, a case reported in 15 GLR 655 has been referred to. On relying the principles laid down in that Full Bench Decision, this Court in Criminal Appeal No. 204 of 1979 has held that in case where the postal envelope sent by registered post is received back by the sender with an endorsement of refusal, presumption can arise that it was so presented to the addressee and he had refused to accept the same and in such circumstances knowledge can be imputed to him of the contents of the envelope.

##. Here in this case on hand, accused No.2 has not refused the envelope containing letter Exh. 39. In the case cited by Shri D.K. Modi, the facts were similar to that of present case. In that case, the envelope and the A.D. slip bore the name of the respondent as also his correct address. The A.D. slip produced in that case, Exh. 9, however did not bear signature of the respondent, but it was bearing the signature of one Ganpat Atabhai. This Court held that no such presumption can be raised that Ganpatbhai Atabhai is the brother of respondent accused or that he was an authorised agent of the respondent accused to receive the said envelope. It is further held that in cases where the addressee refused to accept the envelope tendered to him, a presumption can be raised that he received the letter but in case where from the evidence produced by the prosecution itself, it becomes clear that respondent was neither tendered that envelope nor he signed the A.D. slip in view of receiving the same nor had he received the same but somebody else had received the same, no such presumption as the learned advocate for the appellant in that case wanted the court to raise, can be raised. On the contrary, if there was any such presumption which could have been raised under Section 114 of the Indian Evidence Act that presumption stands amply rebutted by the documentary evidence produced by the prosecution itself and in that view of the matter this High Court dismissed the appeal preferred by the State Government.

##. Here, in this case on hand also, the person who has signed Exh. 42 has not been identified by the prosecution, as to what status/position he was holding in the office of accused No.2.

##. Shri D.K. Modi has cited one another unreported

authority of this Court of judgment dated 3-5-1979 rendered in Criminal Appeal No. 113 of 1979 (Coram : N.H. Bhatt, J). In that case the postal acknowlegement Exh. 9 purported to bear the signature of Govindbhai Sivabhai Patel for and on behalf of accused, but the accused stated that there was no such man Govindbhai Sivabhai Patel who would act on his behalf. Here, in this case, accused No.2 has specifically denied that Exh. 42 does not bear his signature. In said cited case, the accused had asserted that he was not served with the copy of the report of Public Analyst and that assertion was accepted by the learned Magistrate. In cited case, this Court came to the conclusion that looking to the attending circumstances, Court accepted that particular defence and ultimately this Court confirmed the judgment of acquittal by dismissing the appeal.

##. In view of above legal position and looking to the facts of this present case, the prosecution has not proved beyond reasonable doubt that accused No.2 has received letter Exh. 39 along with copy of report of Public Analyst. Under the circumstances, the accused No.2 is denied the right to have the sample of chillies powder analysed by the Central Food Laboratory.

##. Shri D.K.Modi has cited an authority of Rameshwar Dayal v. State of U.P. reported in 1996 SCC (Cri.) 75. In that cited case on the record of the case it appeared that the report of Public Analyst was not supplied to the accused as required under Section 13(2) of the Act and consequently he could not get his own sample examined by the Central Food Laboratory. The Hon'ble Supreme court has held that it is a very valuable right given to him and Rules also provide that such a report should be supplied to the accused within certain period. The Hon'ble Supreme Court held that serious prejudice has been caused to the appellant because of non supply of the report of Public Analyst as required under Section 13(2) of the Act. Here in this case also, when it is not proved that accused No. 2 has received the copy of the report of the Public Analyst, his defence is seriously prejudiced because he could not get the opportunity of getting the sample of chillies powder analysed by the Central Food Laboratory.

##. Under these circumstances, the second contention taken by the learned A.P.P. is negatived. The learned Magistrate has rightly come to the conclusion that accused has been denied the valuable right of getting analysed the sample of chillies powder by the Central Food Laboratory.

##. The learned A.P.P. has taken a third contention that learned Magistrate has erred in arriving at a decision that written consent Exh. 35 is not legal and valid because the Local Health Authority who granted that written consent Exh. 35 did not apply its mind before granting it.

##. Shri D.K. Modi has argued that the Food Inspector forwarded letter Exh. 33 to the Local Health Authority and requested to grant written consent under Section 20 of the Act.

##. On reading Exh. 33, I find that copies of notice in prescribed form No. VI-A were sent to Local Health Authority but along with that notice, postal A.D. receipts were not sent and therefore Local Health Authority has without knowing the fact as to whether that notices in Form No. VI-A have in fact been received by both the accused or not, he granted written consent, Exh. 35, and therefore from documentary evidence it clearly appears that the Local Health Authority granted written consent Exh. 35 without knowing the fact whether notice in Form No. VI has been received by both the accused or not. Local Health Authority has granted written consent only on the basis of documents sent by Food Inspector under letter Exh. 33. He did not call for Postal A.D. Receipts from the Food Inspector.

##. In view of the discussion made hereinabove, the Local Health Authority did not apply its mind before granting written consent, Exh. 35, and therefore the learned Magistrate has rightly come to the conclusion that the written consent, Exh. 35 under Section 20 of the Act is not legal and valid.

##. In view of the above discussion, this court finds that the judgment of the lower court is rendered in accordance with law and settled principles of law. This Court finds nothing otherwise to hold that the judgment of the lower court is erroneous and wrong.

##. Except above three contentions no other contentions were taken by the learned A.P.P. for the State.

##. Under the circumstances, this appeal fails and same is hereby dismissed confirming the order of acquittal passed by the learned Magistrate.

(H.H. Mehta, J)